

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,  
Individually and on behalf of all others  
similarly situated,**

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
CYNTHIA BEANE, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**Defendants.**

**DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL  
SERVICES'S MOTION FOR PARTIAL DISMISSAL OF  
PLAINTIFFS' CLASS ACTION COMPLAINT**

Now come Defendants William Crouch, Cynthia Beane, and the West Virginia Department of Health and Human Resources, Bureau for Medical Services ("WVDHHR"), by counsel Lou Ann S. Cyrus, Roberta F. Green, Caleb B. David, Kimberly M. Bandy, and Shuman McCuskey Slicer PLLC, and request that the Plaintiffs' Class Action Complaint be dismissed in part against them. The WVDHHR moves, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure,

or, in the alternative, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for dismissal of Plaintiff Christopher Fain's claim for compensatory damages asserted in Count II of the Complaint on the basis that the claim is barred by the Eleventh Amendment to the United States Constitution. Additionally, Defendants William Crouch, Cynthia Beane, and the WVDHHR move to dismiss Plaintiffs' request for class certification.

Wherefore, for the reasons more fully set forth in their Memorandum of Law filed contemporaneously herewith, these Defendants request that their Motion for Partial Dismissal be granted, that the subject claims be dismissed against them, with prejudice, and for such other and further relief as the court may direct.

**WILLIAM CROUCH,  
CYNTHIA BEANE, and  
WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,  
BUREAU FOR MEDICAL SERVICES,**

**By counsel**

/s/ Lou Ann S. Cyrus

Lou Ann S. Cyrus, Esquire (WVSB #6558)  
Roberta F. Green, Esquire (WVSB #6598)  
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**Defendants.**

**CERTIFICATE OF SERVICE**

Now come Defendants, William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, by counsel, and do hereby certify that on the 11<sup>th</sup> day of January, 2021, the foregoing **“DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES’S MOTION FOR PARTIAL DISMISSAL OF PLAINTIFFS’ CLASS ACTION COMPLAINT”** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to, and constitutes service on:

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